
(2008) 02 P&H CK 0289
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

SSP P. Ltd.

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Income Tax Act, 1961 — Section 143, 154, 271

Citation : (2008) 219 CTR 486 : (2008) 302 ITR 43

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The present appeal has been filed by the Revenue against the order dated April 5, 2007, passed by the Income Tax Appellate Tribunal, Delhi Bench "H", New Delhi in I. T. A. No. 175/D/2006 in the case of the respondent-assessee for the assessment year 1993-94 raising the following substantial questions of law:

(a) Whether, on the facts and in the circumstances of the case, the hon''ble Income Tax Appellate Tribunal erred in deciding that proving contumacious intent is an essential ingredient in levy of penalty in contravention of the provisions of a civil statute like Income Tax Act in spite of there being so many judgments that breach of a civil obligation attracts levy of penalty whether the contravention was made by the defaulter with any guilty intention or not ?

(b) Whether, on the facts and in the circumstances of the case, the hon''ble Income Tax Appellate Tribunal is in contravention of many judicial pronouncements including Thirupathy Kumar Khemka v. CIT [2007] 291 ITR 122 : 210 CTR 287 (Mad)

(c) Whether, on the facts and in the circumstances of the case, the hon''ble Income Tax Appellate Tribunal erred in deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961, whereas it had confirmed all the additions/disallowances?

2. A brief facts giving rise to this appeal are as under:

3. The respondent-assessee filed a return declaring an income of Rs. 45,62,890 on January 4, 1994, which was processed u/s 143(1)(a) of the Income Tax Act (for short "the Act") on an income of Rs. 53,17,880 vide order dated February 14, 1994. This order was rectified u/s 154 of the Act on an income of Rs. 45,76,027 vide order dated March 4, 1994 and the same was again rectified on March 18, 1994, to an income of Rs. 45,63,320, and finally the assessment was made vide order dated March 26, 1996, by the Additional Commissioner of Income Tax, Special Range, Faridabad u/s 143(3) of the Income Tax Act, 1961. While making the assessment, the Assessing Officer observed that the assessee has not shown purchases of Rs. 5,71,360 in the closing stock and thereby concealed income to that extent. He further observed that the assessee has filed inaccurate particulars of income by making a wrong claim of commission paid to M/s. Rohan Engineers and Consultant (P.) Ltd. for Rs. 94,991. He also observed that the assessee has made false statement with regard to the payment of Rs. 52,500 to M/s. Proplus Management, Registrar of Companies and Sh. K.K. Paul claiming this expenditure to be revenue in nature whereas the same was capital expenditure. Thus, the Assessing Officer vide the assessment order dated March 26, 1996, made the assessment and also ordered for initiation of proceedings u/s 271(1)(c) of the Act. Against the above orders, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Faridabad who partly allowed the appeal vide his order dated February 16, 1998, against which both the Revenue and the assessee preferred appeals before the Tribunal which was decided by the Tribunal vide its order dated August 5, 2004, in I. T. A. No. 2865/D/98.

4. The Assessing Officer initiated penal proceedings u/s 271(1)(c) and in those penalty proceedings, the assessee was granted an opportunity to explain as to why penalty orders should not be passed on the points of additions which were finally upheld by the Tribunal. The assessee vide his letter dated April 18, 2005, submitted that they had neither concealed nor submitted any inaccurate particulars and it was requested that the penalty proceedings may be dropped. However, the Assistant Commissioner of Income Tax, Range-I, Faridabad vide his order dated April 28, 2005, passed the penalty order against the respondent-assessee. The relevant part of the order is reproduced as under:

In view of the above position, it is held that the assessee-con-cealed income of Rs. 5,71,360 by not showing purchases of the same amount in the closing stock. Further, the assessee filed inaccurate particulars by making a wrong claim of payment of commission of Rs. 94,991 to M/s. Rohan Engineers and Consultants (P.) Ltd. Similarly the assessee-company made payments of Rs. 52,500 to M/s. Proplus Management, Registrar of Companies and Sh. K.K. Paul and claimed the same as revenue expenditure when in fact, they were of capital nature. This total income concealed/inaccurate particulars filed was of the order of Rs. 7,18,851 and I am satisfied that for concealment/wrong claim, the assessee is liable to

penalty on the sum of Rs. 7,18,851. A penalty of Rs. 4,15,000 is as such imposed which is worked out as under:

Tax payable on income of Rs. 54,03,021 Rs. After appeal effect to the order of the hon"ble Income Tax 31,06,736 Appellate Tribunal Less: Tax on above income as reduced by Rs. 7,18,851 i.e. on 26,93,398 Rs. 46,84,170 ----- Tax sought to be evaded 4,13,338 Minimum penalty at 100 per cent. 4,13,338 Maximum penalty at 300 per cent. 12,40,014 Fenalty imposed 4,15,000

Issued demand notice and challan.

The above penalty order has been passed after taking necessary approval from the Addl. Commissioner of Income Tax, Range-I, Faridabad communicated vide his letter No. 380 dated April 28, 2005.

5. Feeling aggrieved against the order dated April 28, 2005, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Faridabad, who vide his order dated October 26, 2005, dismissed the appeal filed by the assessee and confirmed the order of the Assessing Officer with the further directions to the Assessing Officer to include Rs. 2,85,585 for further enhancement of the penalty.

6. The assessee filed an appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals) whereby he has upheld the order of imposing the penalty u/s 271(1)(c) of the Act passed by the Assessing Officer. The Tribunal vide its order dated April 5, 2007, accepted the appeal filed by the assessee and set aside the order of the Commissioner of Income Tax (Appeals) and deleted the penalty of Rs. 4,15,000. The operative part of the judgment of the Tribunal is reproduced as under:

We have heard the rival submissions and perused the orders of the lower authorities and the materials available on record. We find that the Assessing Officer observed that the assessee has not shown purchases of Rs. 5,71,360 in the closing stock and thereby concealed income to that extent. He further observed that the assessee has filed inaccurate particulars of income by making a wrong claim of commission paid to M/s. Roshan Engg. and Consultants (P) Ltd. Rs. 94,991. He further observed that similarly the assessee has made false statement with regard to the payment of Rs. 52,500 to M/s. Pro-plus Management Service, Registrar of Companies and Sh. K. K. Paul claiming this expenditure to be revenue in nature whereas the same was capital expenditure. The Assessing Officer held that the assessee has furnished inaccurate particulars of income amounting to Rs. 7,18,851 and levied penalty of Rs. 4,15,000. We find that the return was filed by the assessee on January 4, 1994, whereas the decision of the hon"ble Supreme Court in the case of Brooke Bond India Limited Vs. Commissioner of Income Tax, West Bengal-III, Calcutta, was rendered on February 27, 1997, holding fees payable to the Registrar of Companies for increase in share capital as capital expenditure. Thus on the date of filing of the return the assessee did not have the benefit of the order of the hon"ble Supreme Court.

7. Therefore, penalty cannot be levied on the sum of Rs. 7,500 paid to the Registrar of Companies. Further with regard to Rs. 5,71,360 not shown by the assessee in the closing stock we find that the assessee admitted the mistake and the Tribunal while deciding the issue has held that this amount has to be included in the closing stock of the year under appeal and simultaneously has to be considered in the opening stock in a subsequent year. Thus we find that the net result to the addition of the income of the assessee is zero as addition is made in one year whereas deduction is allowed in the subsequent year. Further the Assessing Officer as well as the Commissioner of Income Tax (Appeals) has not allowed the deduction for payment of Rs. 25,000 to M/s. Proplus Management and Rs. 20,000 to Sh. K.K. Paul on the ground that the evidence for rendering of services could not be filed. In these facts we are of the view that though the Assessing Officer was of the view that no services were rendered by two persons M/s. Proplus Management and Sh. K.K. Paul, but it cannot be said that the assessee filed inaccurate particulars of income or concealed its income. The hon'ble Supreme Court in the case of Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, has held that unless the filing of an inaccurate return is accompanied by a guilty mind, penalty cannot be imposed. If the view canvassed on behalf of the Revenue were accepted, the result would be that if the assessee raised a bona fide contention that a particular item is not taxable, he would have to show it as forming part and pay tax upon it on the point of being held liable for penalty in case contention is ultimately found by the court to be not acceptable. This surely could never have been intended by the Legislature. Hence, for the reasons given above, we are of the view that the penalty levied cannot be sustained in law. Hence, we set aside the order of the Commissioner of Income Tax (Appeals) and delete the penalty of Rs. 4,15,000. The grounds of appeal of the assessee are allowed.

8. Mr. Yogesh Putney, counsel for the appellant, has argued that the assessee had filed an inaccurate particulars as the additions have been made on the returned income as declared by the assessee and therefore, the breach of this statutory obligation attracts levy of penalty irrespective of the fact whether the contravention was made by the assessee with any guilty intention or not.

9. After considering the arguments raised by counsel for the appellant and perusing the record, we find no force in the contention raised by counsel for the appellant. A perusal of the impugned order would show that the Tribunal has given a finding of fact to the effect that the return was filed by the assessee on January 4, 1994, whereas the apex court in the case of Brooke Bond India Limited Vs. Commissioner of Income Tax, West Bengal-III, Calcutta, rendered the decision on February 27, 1997, holding fees payable to the Registrar of Companies for increase in share capital as capital expenditure. Thus, the penalty cannot be levied on the amount paid to the Registrar of Companies. It has also been found by the Revenue that with regard to the sum of Rs. 5,71,360 which was not shown by the assessee in the closing stock, the Tribunal while deciding the quantum appeal, has held that this amount has to be included in the closing

stock of the year under appeal and simultaneously has to be considered in the opening stock in a subsequent year and the net result to the addition of the income of the assessee is zero on this account. Similarly, the Tribunal has given a finding with regard to the claim of deduction for payment of Rs. 25,000 to M/s. Proplus Management and Rs. 20,000 to Sh. K.K. Paul, it cannot be said that the assessee filed inaccurate particulars of income or concealed its income. The hon''ble Supreme Court in the case of Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, has held that unless the filing of an inaccurate return is accompanied by a guilty mind, penalty cannot be imposed. It has been further held that the return cannot be "false" unless there is an element of deliberateness in it.

10. Where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so as to include the same, it would not be right to treat the return as a false return inviting imposition of penalty. Thus, we are of the view that the order of the Tribunal does not suffer from any illegality and no substantial question of law arises in the appeal and the same is dismissed in limine.